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Before the Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 93-254

In the Matter of
Reconsideration
of
Limits
on
Commercial Time

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COMMENT ON NOTICE OF INQUIRY

Presented herewith:

Comment in advance of December 20, 1993

Submitted by:

Video Mall Communications Inc.
Licensee of WTJC-TV, Channel 26
2675 Dayton Road
Springfield, Ohio 45506

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List A B C D E

To the Honorable Commissioners of the Federal Communications Commission:

Video Mall Communications Inc. opposes any reinstatement of commercial limitations on a number of consistent grounds. We therefore urge the FCC to close notice of inquiry, MM Docket No: 93-254, with no action taken to reinstate commercial limitations. We submit the following matters as argument against reinstatement of commercial limitations for over the air television stations.

Communications policy as an argument against reinstatement of commercial limitations:

Home shopping services should not be singled out for isolated repressive regulatory treatment. Transactional programming, whether by home shopping formatted stations or other newly emerging formats, serves an affirmative public interest purpose. To exclude home shopping formats from over-the-air telecasts by reinstatement of commercial limitations unfairly denies non-cable viewers an opportunity to enjoy the individual choice of whether or not to view shopping, and whether or not to be part of the nation's experiment in evolving transactional video services.

Reinstatement of commercial limitations therefore is an act of censorship, by arbitrary subjective entertainment definition, which would then be imposed upon all non-cable viewers by such an erroneous policy reversal.

Communications policy has traditionally been directed at encouraging diversity of ownership and program options. Home shopping formatted stations clearly further both stated regulatory goals in these vital areas.

Amply demonstrated is the fact that home shopping formats have offered a means of small business ownership and minority business ownership of over-the-air television stations which could not be sustained through more traditional independent operation of those stations. Indeed in the present era of unlimited video choice, viable sources of commercial revenue are more diluted as advertising avails for traditional commercial accounts are multiplied by cable and other outlets, thereby making small independent stations more difficult to sustain. In many cases, home shopping programming is the only mechanism of revenue for all, or a substantial portion, of the local station's operating income.

In many instances, these revenue sources derived from telecast of home shopping programming allow smaller independent stations to continue operations which provide the only localized television exposure for community individuals, groups, and issues on the local level. The entire system of local independent operation of local stations will be placed in financial jeopardy should home shopping type programming be limited on over-the-air stations. Reinstatement of commercial limitations will most certainly result in fewer non cable video choices and fewer operating independent stations for the non cable viewers.

In testimony before Congress and the FCC it has been clearly shown, in multiplied numbers of forums, that over-the-air television is at an increasingly disadvantaged position with regards to cable programming services. It is this specific erosion of the future prospects of over-the-air television station operation which has driven much of the legislation and rulemaking of recent years. Any reinstatement of commercial limitations accelerates and exasperates the eroding competitive positions of independently owned and operated over-the-air free television.

The mood of government should remain constant in fostering new types of transactional innovative video services which home shopping portends. The 1984 Television Deregulatory Act, along with the current administration, seek to move the nation forward by encouraging such television diversity. The actions of government policy have been, and should be, to encourage and foster respect for the unique tastes in programming springing from an ever increasingly diverse public.

Any reinstatement of the commercial limitations is tantamount to a move against the multi-cultural tastes and concurrently against viewing choices of an evolving free society, particularly as applied to free over-the-air television stations.

The Commission has demonstrated time and again that there is nothing inherently inconsistent between a home shopping formatted station and that station's fulfillment of public service responsibilities. To the contrary, it has been clearly shown to the Commission, and others, that home shopping stations exceed the letter of the law and serve the spirit of the law as well in areas of public affairs, community information and public service programming, all within local cut-aways of the overall home shopping format.

Furthermore, commercial speech enjoys the full First Amendment protection which should be granted home shopping formatted stations without penalty of time restrictions of reinstatement of commercial limitations.

Definition of "entertainment" as an argument against reinstatement of commercial limitations:

Some seeking to reinstate commercial limitations argue the home shopping format is purely commercial telecast, with little or no entertainment value, and should therefore be subjected to reinstatement of commercial limitations. And yet one has only to visit any local mall to see the entertainment value which the activity of shopping holds for millions of persons across the nation.

The dictionary defines entertainment as "activity which interests, pleases, amuses".

It logically follows that millions of persons, who find shopping at the local mall to be a form of entertainment, give complete credence to the shopping format as something far more complex than a mere commercial transaction at first glance.

Visible for observation and documentation, in most any regional mall, are countless numbers of persons who find the personal activities of browsing, shopping, product comparison and product education to be an entertaining pass-time. These diverse citizens populating most any mall, or center of commerce, would quickly defend their right to enjoy such a hobby of shopping, or "entertainment", as they may define these actions associated with the shopping pass-time activities.

And yet home shopping formatted stations bring an even greater level of communication than an idle stroll through the average local regional mall. Home shopping programming is a form of complex communication which blends elements of entertainment, product information and comparison, and participation all within the shopping formatted program.

It is this specific activity, by definition an entertainment form, which home shopping stations bring directly to the convenience of home viewership. The home shopping programmed stations offer complete unlimited access to all persons by over-the-air telecast of shopping "entertainment" activities. It is also of great importance to note the lack of physical barriers which home shopping "entertainment" offers its viewers, some of whom might otherwise be excluded from, or discouraged from, local regional mall shopping entertainment as a result of physical challenges.

There can be no doubt that SHOPPING IS ENTERTAINMENT for millions nationwide. If shopping is therefore entertainment, which may be successfully demonstrated, who among us may argue the amount of entertainment value which home shopping programs contain for the shopping enthusiast?

Certainly none can argue the entertainment value content of home shopping television verses a Gilligan's Island re-run, or a Big Time Wrestling Telecast, or yet another game show. Such matters are those of individual taste and can not be objectively debated.

In the absence of objective criteria, how then may any individual, or any government agency, attempt to rank the entertainment value of home shopping formatted stations as opposed to traditional independent station operations? In this age of enlightened government such attempts at dictation of individual tastes in entertainment fail on all basis of impartial logical argument and rules of debate.

Consequently citizens who enjoy shopping should not be excluded from enjoying "their" choice of home shopping entertainment, from over-the-air television stations, merely because some may rank the entertainment level of a Gilligan's Island telecast, for example, above home shopping programs offering product information, comparison, entertainment and participation.

Practical Argument against reinstatement of commercial limitations:

Video Mall Communications Inc. is the forth licensee of television Channel 26, the only full power station licensed to Springfield, Ohio. Video Mall Communications Inc. has successfully operated Channel 26, as WTJC-TV, since January 31, 1991.

The station programs hourly public affairs, community information, and public service announcements within a format of the Home Shopping Club (trademark).

In a previous document submitted to the FCC, in excess of 100 pages in length, WTJC-TV provided ample documentation of the quantity, quality, and effectiveness of the station's public affairs, community information and public service announcements. Included were many letters of testimonial support from diverse groups of community leaders who have seen first hand the impact of the station's local service in this local city.

The earlier document clearly showed that, unlike many treatments of programming targeted to public interest, WTJC-TV has chosen to send video production crews into the community to produce most of its public affairs, community information and public service programming "on-location" throughout the service area. This unique "on-location" programming treatment has given television exposure to a culturally diverse and a program diverse spectrum of community civic, service, social, educational, ethnic, and cultural organizations that have previously been overlooked by other distant stations and cable access channels.

The operation of WTJC-TV, under licensee Video Mall Communications Inc., has given voice to these diverse individuals and groups who might never have received broadcast coverage and exposure through any other station in the greater A.D.I. WTJC-TV has therefore continued to operate in the highest fulfillment of the public interest, need, and necessity as described in communications law by the hourly telecast of these public affairs, community information and public service programming.

And yet the successful operation of WTJC-TV is only possible as a direct result of the affiliation with the Home shopping Network. (trademark)

Springfield, Ohio is an aging industrial and manufacturing community of approximately 65,000 persons. The community lacks the vibrancy of growth to support an independent television station in the traditional sense of the term. Indeed, the THREE previous licensees of Channel 26 each FAILED FINANCIALLY and are no longer in business as a consequence of the inability of the station to attract local and national advertising revenue by programming a variety of independent formats over a number of years time.

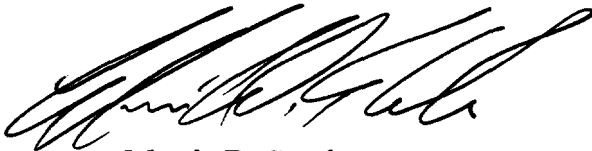
Video Mall Communications Inc. has utilized the only remaining currently viable option for operation of Channel 26. As a direct result of the Home Shopping Network (trademark) affiliation citizens of Springfield enjoy local hourly programming target to the community's public affairs, community information and public service needs.

No other viable format currently exists which would adequately fund operation of WTJC-TV should commercial limitations be reinstated.

In conclusion, any reinstatement of commercial limitations would run contrary to the stated goals of fostering free over-the-air television and would favor cable only networks which operate without such limitations. Any reinstatement of commercial limitations would favor cable viewers who would retain shopping choices at the expense of over-the-air viewers who would be denied such program options. Any reinstatement of commercial limitations would deny all local over-the-air television in many cities where home shopping formats are the only viable means of station operation. Any reinstatement of commercial limitations would cause the financial failure of many minority and small business owned and operated home shopping stations where no other viable format currently exists.

Please therefore REJECT reinstatement of commercial limitations for over-the-air television stations.

Sincerely,



Marvin D. Sparks
President
Video Mall Communications Inc.
licensee of WTJC-TV, Channel 26, Springfield, Ohio

Submitted this 15th day of December, 1993